

## **REMARKS**

Claims 1 and 3-10 are pending in this application.

### **I. Claim Rejection Under 35 U.S.C. § 112**

The Examiner rejects claims 1 and 3-10 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner takes the position that the specification does not provide literal support for Mg- and Co-containing yeasts. Applicants respectfully traverse the rejection.

Claim 1 recites the feature of “a metal-containing yeast comprising 0.01% to 5.0% by weight of a trace metal selected from the group consisting of Mg, Zn, Fe, Cu, Co and Mn relative to the total amount of the foodstuff”. The specification clearly supports Mg- and Co-containing yeasts.

The specification states, “To strengthen the effect of a dietary supplement, the indigestible polysaccharides of the invention may additionally contain sodium salt, potassium salt, magnesium salt and calcium salt, and further the needed volume of trace metals such as Zn, Fe, Cu, Co, Mn, Cr and Se in the form of the approved food additives” (see page 6, lines 11-14, emphasis added).

Moreover, the specification states, “A patient with kidney failure or hepatic failure often lacks ingestion of trace metals, which are considered to be fundamental to maintenance of physical functioning, such as Mg, Zn, Fe, Cu, Co, Mn, Cr and Se due to unbalanced diet. Likewise, a patient undergoing hemodialysis treatment often lacks ingestion of the trace metals due to exteriorize thereof during hemodialysis, consequently to possibly cause renal anemia” (see the paragraph bridging pages 7 and 8, emphasis added).

Furthermore, the next paragraph of the specification states, “The pathological improvement food of the invention may contain 0.01% to 5.0% by weight of trace metals in a free state or in the additive form of metal-containing yeast...In addition to the aforesaid prominent effects of the pathological improvement food of the invention, the essential nutrients such as the trace metals noted above are efficiently added thereto, consequently to produce a synergistic effect for improving the physical conditions” (see page 8, 1<sup>st</sup> full paragraph, emphasis added).

In view of these descriptions in the specification, one of ordinary skill in the art would clearly recognize that Applicants had possession of a metal-containing yeast comprising 0.01% to 5.0% by weight of Mg or Co, in addition to Zn, Fe, Cu and Mn.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

## **II. Claim Rejection Under 35 U.S.C. § 103**

The Examiner rejects claims 1 and 3-10 under 35 U.S.C. §103(a) as being unpatentable over Nakashima et al. (U.S. 5,126,143) in view of Farmer (U.S. 6,461,607) and FR 2244464, as evidenced by Lasater et al. (U.S. 5,200,218), and further in view of Yuan et al. (Biotechnology Letters, Feb. 2004). Applicants respectfully traverse the rejection.

The present application is a national stage application of international application No. PCT/JP2004/004319, filed March 26, 2004, and claims priority to Japanese priority application No. 2003-086141, filed **March 26, 2003**. Applicants submit herewith an accurate English language translation of the certified copy of JP 2003-086141, perfecting Applicants' claim for foreign priority under 35 U.S.C. § 119 (see 37 CFR § 1.55).

The Yuan et al. reference was published in **February of 2004**, which is after the filing date of JP 2003-086141. Accordingly, the reference is not available as prior art against the present application.

The Examiner acknowledges that Nakashima et al., Farmer, FR 2244464 and Lasater et al. fail to disclose or suggest the food composition of claim 1, but asserts that the Yuan et al. reference remedies the deficiencies of these references. However, the Yuan et al. reference is not available as prior art against the present application, because the claim for foreign priority has been perfected.

Therefore, claim 1 would not have been obvious over the references.

Claims 3-10 depend directly or indirectly from claim 1, and thus also would not have been obvious over the references.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

### III. Conclusion

For these reasons, Applicants take the position that the presently claimed invention is clearly patentable over the applied references.

Therefore, in view of the foregoing remarks, it is submitted that the rejections set forth by the Examiner have been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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Attachment: Verified English Translation of JP 2003-086141